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Daily Civil Law Review A Daily Bulletin listing Decisions of Superior Courts of Australia

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CIVIL (Insurance, Banking, Construction & Government)

Executive Summary (1 minute read)

Turnbull v Turnbull (NSWSC) - real property - licences - first defendant not estopped from denying licence irrevocable - claims for relief dismissed (I B C G)

Williamson v Plum Interiors Pty Limited (in liquidation) (NSWSC) - transfer of proceedings - transfer of District Court proceedings to Supreme Court granted - re-transfer of proceedings back to District Court refused (I B C G)

Strange v Turnbull (NSWSC) - summary judgment - claims in negligence, assault and false imprisonment arising from incident in which plaintiff witnessed defendant shoot and kill his workmate - summary judgment granted on negligence claim - summary judgment refused on intentional tort claims (I B C G)

JP Property Services Pty Limited v Chief Commissioner of State Revenue (NSWSC) - taxation - payroll tax - contracts were not employment agency contracts - plaintiff not obliged to pay payroll tax on payments made to Subcontractors - assessments revoked (I B C G)

Rich v Ryan (VSC) - judicial review - plaintiff prisoner sought judicial review of defendant's direction that he be subjected to urine testing - summary judgment refused - strike out of proceedings refused (I B C G)

Huntington v Kew Golf Club & Anor (VSC) - legal practitioners - personal injury - application

to restrain barristers from acting in proceedings dismissed (I B C G)

Summaries With Link (Five Minute Read)

Turnbull v Turnbull [2017] NSWSC 1316

Supreme Court of New South Wales

Emmett AJA

Real property - licences - proceedings concerned whether first defendant, and first defendant's servants and agents, were estopped from denying that licence granted to plaintiffs to 'come and go and pass over part of a property' was irrevocable for so long as both plaintiffs or one of them owned two other properties - whether alleged representation made by first defendant's late husband - reliance - detriment - Sch5 *Water Management (General) Regulation 2011* (NSWSC) - held: plaintiffs did not establish entitlement to anything other than licence at will or licence 'terminable on reasonable notice' - first defendant not estopped from denying licence was irrevocable so long as plaintiffs or plaintiff owned the properties - claims for relief dismissed.

[View Decision](#) (I B C G)

Williamson v Plum Interiors Pty Limited (in liquidation) [2017] NSWSC 1389

Supreme Court of New South Wales

Beech-Jones J Transfer of proceedings - plaintiff sought transfer of District Court proceedings to Supreme Court, that upon transfer of proceedings they be 'immediately transferred back' to District Court, and declaratory relief that effect of orders would be to free District Court of \$750,00 monetary limit of its jurisdiction - ss43(1) & 4(1) *District Court Act 1973* (NSW) - whether proceedings could have been commenced in District Court - held: amount awarded to plaintiff, if successful, was likely to exceed \$750,000 - Court granted transfer of proceedings to Supreme Court but refused transfer back to District Court and declaratory relief.

[View Decision](#) (I B C G)

Strange v Turnbull [2017] NSWSC 1363

Supreme Court of New South Wales

R A Hulme J

Summary judgment - plaintiff sought summary judgment in claim against executors of deceased's defendant's estate - plaintiff claimed in negligence, assault and false imprisonment arising from incident in which plaintiff witnessed defendant shoot and kill his workmate - defendant was found guilty of murder and died while serving sentence - summary judgment not opposed on negligence claim, however it was contended there were triable issues concerning intentional tort claims - r13.1 *Uniform Civil Procedure Rules 2005* (NSW) - held: Court not persuaded to order summary judgment - there was triable issue concerning 'deliberateness of Mr Turnbull's actions vis-à-vis Mr Strange' and a prospect of expert evidence bearing on that issue - judgment for plaintiff on negligence claim - summary judgment refused.

[View Decision](#) (I B C G)

JP Property Services Pty Limited v Chief Commissioner of State Revenue [2017] NSWSC 1391

Supreme Court of New South Wales

Kunc J

Taxation - payroll tax - plaintiff provided services to clients including to supermarkets operated by company (Franklins) - plaintiff used own employees or third parties (Subcontractors) to provide the services - defendant conducted audit of plaintiff - defendant formed view that contracts between plaintiff and Subcontractors were employment agency contracts (EACs) such that JP was obliged to pay payroll tax on payments it made to the Subcontractors- plaintiff sought review of defendant's decision - whether any or all of three different types of contract were EACs: the consecutive contracts between plaintiff and Franklins; the contracts between plaintiff and clients other than Franklins; the contracts between plaintiff and Subcontractors - s37(1) *Payroll Tax Act 2007* (NSW) - whether Subcontractors' services were 'for a client' of employment agent - held: Court not satisfied any of the three types of contracts were EACs - assessments revoked - judgment for plaintiff.

[View Decision](#) (I B C G)

Rich v Ryan [2017] VSC 607

Supreme Court of Victoria

Lansdowne AsJ

Summary dismissal - judicial review - plaintiff was prisoner who sought review of defendant's direction that he be subjected to urine testing, contending the procedure followed was non-compliant with s29A *Corrections Act 1986* (Vic) - defendant sought strike out of originating motion or summary judgment - 'tests' - held: Court refused strike out application except to strike out one paragraph included without leave - plaintiff's interpretation of 'tests' in s29A(2)(c) had some merit - there was question to be tried - summary judgment refused.

[Rich](#) (I B C G)

Huntington v Kew Golf Club & Anor [2017] VSC 612

Supreme Court of Victoria

Zammit J

Legal practitioners - personal injury - plaintiff sued first defendant and company for injuries suffered in accident - first defendant sought to restrain barristers from appearing for plaintiff in matter's trial, on basis that there was 'real possibility' they may be required to give evidence - r101(d) *Legal Profession Uniform Conduct (Barristers) Rules 2015* (Vic) - timing of application - public interest - held: Court not satisfied there was real possibility barristers would be required to give evidence - not in public interest to deprive plaintiff of choice of barristers 'without due cause' - application dismissed.

[Huntington](#) (I B C G)

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CRIMINAL

Executive Summary

Cameron v R (NSWCCA) - criminal law - appeal against sentences for murder and being knowingly concerned in the cultivation of a large commercial quantity of cannabis - appeal dismissed

Dobson v Tasmania (TASCCA) - criminal law - murder - appellant pleaded guilty to murder - appellant sentenced to imprisonment for the term of his natural life with 15 year non-parole period - appeal against sentence dismissed

Summaries With Link

Cameron v R [2017] NSWCCA 229

Court of Criminal Appeal of New South Wales

Basten JA; Button & Hamill JJ

Criminal law - applicant sought leave to appeal against two sentences: sentence for murder, and sentence for 'being knowingly concerned in the cultivation of a large commercial quantity of cannabis' - sentence for murder was 24 years in prison with non-parole period of 18 years - sentence for being knowingly concerned in the cultivation of a large commercial quantity of cannabis was 10 years in prison with non-parole period of 7 years and 6 months - whether failure to give sufficient weight to assistance to authorities - whether sentence manifestly excessive - whether primary judge adhered to principle of parity - *Crimes (Sentencing Procedure) Act 1999* (NSW) - Article 26 *International Covenant on Civil and Political Rights* - held: grounds of appeal failed - appeal dismissed.

[View Decision](#)

Dobson v Tasmania [2017] TASCCA 19

Court of Criminal Appeal of Tasmania

Tennent, Wood & Pearce JJ

Criminal law - appellant pleaded guilty to murder and sentenced to imprisonment for term of his natural life with 15 year non-parole period - appellant appealed against his sentence - whether sentence manifestly excessive - whether error arising from categorisation of crime as 'in the worst category of murder' - whether sentencing judge offended the principles in *Veen v The Queen (No 2)* [1988] HCA 14 - whether erroneous treatment of appellant's prior criminal history - whether case 'outside the category that is so grave as to warrant the maximum sentence' - protection of the community - principle of proportionality - s157(1)(c) *Criminal Code* (Tas) - whether sentencing judge erred by not imposing finite sentence - held: no error by sentencing judge demonstrated - appeal dismissed.

Dobson



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Shakespeare

BY HENRY WADSWORTH LONGFELLOW

A vision as of crowded city streets,
With human life in endless overflow;
Thunder of thoroughfares; trumpets that blow
To battle; clamor, in obscure retreats, Of sailors landed
from their anchored fleets;
Tolling of bells in turrets, and below
Voices of children, and bright flowers that throw
O'er garden-walls their intermingled sweets!
This vision comes to me when I unfold
The volume of the Poet paramount,
Whom all the Muses loved, not one alone; — Into his
hands they put the lyre of gold,
And, crowned with sacred laurel at their fount,
Placed him as Musagetes on their throne.

https://en.wikipedia.org/wiki/William_Shakespeare

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